

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<u>LAURIE GILBERT,</u>	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-10746-RWZ
	)	
JOHN HEGGARTY and TIMOTHY DUBE	)	
	)	
<u>Defendants.</u>	)	

**MOTION FOR SANCTIONS FOR THE PLAINTIFF'S FAILURE TO FILE A  
WITNESS LIST PURSUANT TO THE COURT'S PRE-TRIAL ORDER**

The Defendants, John Heggarty and Timothy Dube, hereby move, pursuant to F.R.Civ.P. 37 for the Court to issue sanctions against the Plaintiff for her failure to provide file a list of witnesses who will actually testify at trial by August 30, 2006. As grounds for this Motion, the Defendants state as follows:

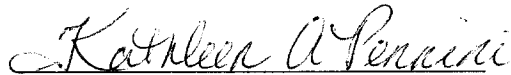
1. On August 17, 2006, the parties filed a final pre-trial memorandum in which the Plaintiff and Defendants delineated the witnesses that would appear at trial for each party. A true copy of the final pre-trial memorandum is attached hereto as Exhibit 1.
2. On August 23, 2006, the Plaintiff filed a witness list with the Court that included numerous people that were not included among the witnesses listed in the final pre-trial memorandum.
3. Many of the witnesses delineated in the Plaintiff's August 23, 2006 witness list had never been previously disclosed as possible witnesses.
4. One of the witnesses delineated in the Plaintiff's August 23, 2006 witness list was deceased.

5. The Defendants objected to a majority of the witnesses delineated on the Plaintiff's August 23, 2006 witness list as they had never been previously disclosed as possible witnesses.
6. The Defendants also objected to the Plaintiff's failure to provide telephone contact information for the witnesses delineated in the August 23, 2006 witness list.
7. The Defendants also objected to the delineation of Dr. Thomas Scott as a witness to the extent that Dr. Scott is being called as an expert witness.
8. Plaintiff's counsel admitted that he did not know which of the people delineated in the Plaintiff's August 23, 2006 witnesses list would actually appear as witnesses.
9. Per order of the Court's Pre-Trial Order, dated August 28, 2006, the Plaintiff was required "to file a list of the witnesses who will actually testify by August 30, 2006."
10. The Plaintiff failed to file a witness list by August 30, 2006.
11. The Plaintiff's failure to file a witness list by August 30, 2006, as ordered by the Court was not a harmless error.
12. The Plaintiff's failure to file a witness list by August 30, 2006, was prejudicial to the Defendants as the failure to disclose such witnesses prevent the Defendants from preparing for the examination of this witnesses at trial and precluded the Defendants from deposing such witnesses or otherwise conducting discovery concerning these witnesses during the discovery period.

WHEREFORE, the Defendants, Wherefore, the Defendants, John Heggarty and Timothy Dube, hereby move that the Court impose the following sanctions on the Plaintiff:

- a) An Order dismissing this action in its entirety due to the Plaintiff's failure to disclose required information; and
- b) An Order prohibiting the Plaintiff from calling witnesses at trial.

Respectfully Submitted,  
For the Defendants,  
**JOHN HEGGARTY and TIMOTHY DUBE,**  
By their attorneys,



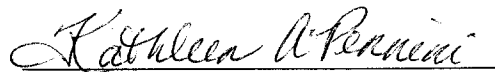
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Two Center Plaza, Suite 430  
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617-723-9777

Date: September 1, 2006

**CERTIFICATE OF SERVICE**

I, Kathleen A. Pennini, do hereby certify that a true copy of the foregoing document has been served via electronic filing and facsimile, this 1<sup>st</sup> day of September 2006, upon:

Richard N. Foley, Esquire  
414 State Street  
Portsmouth, NH 03801



Kathleen A. Pennini